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UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Mailed: May 6, 2004

Opposition No. 91152909

SYNTELSOFT INC.

v.

SYNTEL, INC.

Before Seeherman, Hanak, and Bottorff, Administrative Trademark Judges.

By the Board:

By order of the Board dated December 11, 2003, testimony periods were reset. *See* Order, December 11, 2003 (denying applicant's motion for summary judgment). Under the new schedule, opposer's testimony period closed on February 17, 2004. No testimony or other evidence was submitted.

On or about December 19, 2003, it appears from the Board's file that a copy of the Board's December 11 order was returned by the Postal Service as undeliverable. However, since the USPTO mailroom discarded the envelope, it was impossible to determine whether this was the copy mailed to opposer or to applicant.

On February 26, 2004, applicant contacted the Board attorney responsible for interlocutory matters in this proceeding to determine whether the Board had received

testimony or other evidence from opposer. Because it was unclear whether opposer had received the order resetting the trial schedule – and if not, why – the Board contacted opposer. The *pro se* opposer indicated that he had received the December 11, 2003, order, and was aware of the reset trial schedule. Opposer stated that he had decided not to submit testimony or other evidence, and wished to rely instead on the pleadings and other papers currently of record. Sujek Affidavit at 1-2.

Now before the Board is applicant's motion to dismiss for opposer's failure to prosecute the opposition, pursuant to Trademark Rule 2.132(a). The motion is unopposed.

The Trademark Rules state that the Board may grant an unopposed motion as conceded. Trademark Rule 2.127(a). However, even if we considered this motion on its merits, opposer would fare no better.

The opposer in a Board proceeding bears the burden of demonstrating by a preponderance of evidence (1) its standing to oppose registration and (2) a valid ground for the denial of registration. However, mere allegations will not suffice. Opposer must prove its allegations by offering during its testimony period admissible evidence such as testimony and documents which support its case.

Here, the record is devoid of evidence to support opposer's claims. In this regard, we note that the

assertions made in the notice of opposition must be proven, since they were essentially denied by applicant's answer. Likewise, the documents attached to the notice of opposition are not considered to be evidence unless properly submitted during opposer's testimony period. Trademark Rule 2.122(c). Opposer's other papers – including its response to applicant's motion for summary judgment – are likewise not considered as evidence for purposes of trial. *See* Trademark Rule 2.127(e)(2).

Because opposer bears the burden of proof, it cannot prevail without the submission of evidence during its testimony period. Opposer's pleadings and other papers do not suffice to establish either its standing or its ground for opposition. And despite applicant's motion, opposer has not shown "good and sufficient cause" why judgment should not be entered, nor has opposer requested that its testimony period be reopened.

Accordingly, applicant's motion for involuntary dismissal is GRANTED. *See* Trademark Rules 2.127(a) and 2.132, and the opposition is dismissed with prejudice.

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